

## Decision from E. B. Moore, Commissioner of Patents to Alexander Graham Bell, April 25, 1912

2—253 Room No 249 MMS ADDRESS ONLY Paper No. 19 The Commissioner of Patents. DEPARTMENT OF THE INTERIOR. Washington, D. C. UNITED STATES PATENT OFFICE, *Washington, D. C.*, April 25, 1912. U. S. PATENT OFFICE APR 25 1912 MAILED. *In Re Interference #33964 Alexander Graham Bell Before the Primary Examiner. v. Division 22 John W. Smith Flying Machines, Alexander Graham Bell, Care Mauro, Cameron, Lewis & Massie, Washington, D. C.*

*Please find below a communication from the EXAMINER in regard to the above-cited case.*

*Very respectfully, E.B. Moore. Commissioner of Patents.*

1—1759 This is a motion brought by Bell to dissolve.

Claims involved are:

1. In a flying machine, the combination of a supporting surface, and an unitary device for balancing said machine turning on an axis normal to said supporting surface at approximately its center of pressure.
2. In a flying machine, the combination of a supporting surface, with an unitary balancing rudder or device lying in a plane passing through the medial fore and aft line of said surface at approximately the center of pressure of the machine, which plane is vertical when the machine is balanced laterally, and means operative by the aviator for turning said rudder or device on an axis within said plane.

The grounds alleged in support of the motion are:

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(1) because he does not disclose a “unitary” device (as demanded by both counts of the issue) for balancing the machine. Smith's two rudders 24 and 11 constitute a compound rather than a unitary device.

(2) because he does not disclose a “balancing” rudder or device, as demanded by both counts of the issue. His vertical rudder 24 is not a balancing but a steering device, and its location is such that it does not and cannot have a balancing effect.

(3) because he does not disclose a balancing rudder turning on an axis normal to the supporting surface “at approximately its center of pressure”; nor does he disclose any rudder of any description located “at approximately the center of pressure of the machine”, whether for balancing or otherwise.

(4) because as originally filed, his application did not disclose, either in the description or drawings, any rudder “disposed over the center of gravity of the device”. Such descriptive matter now present in his application, was introduced by amendment of June 2d, 1910, without warrant of law or fact, and constitutes new matter.

Smith, the senior party, failed to appear at the hearing and neither party filed a brief. Counsel for Smith, however, filed a letter stating that he would not appear and that he was advised by his client not to incur the expense of filing a brief.

Each of the counts is limited to a unitary means for balancing the machine comprising a vertical rudder and turning on an axis and located at the center of pressure.

The record discloses that the word “unitary” was inserted during the ex parte prosecution of the case to distinguish over the art. It consequently has a specific and definite meaning, that is, the claims define that there is a single means definitely located at the center of pressure as distinct from means so located, and through connection cooperating with other means. Smith's two steering rudders are located over the forward planes and the other

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over a rear plane. These rudders are so connected through flexible connection that when the steering wheel is turned they are operated in opposite directions to turn the device laterally. This is clearly a different construction and designed for a different purpose.

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R. F. The motion is granted, and a limit of twenty days within which to appeal is fixed.